IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8513 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER - Petitioner(s)

Versus

ARUHIBEN P PANCHAYAT C/O BB GOGIA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 22/06/2005

ORAL JUDGMENT

1.0 The petitioner Board has challenged the order dated 31.07.1996 passed by the Presiding Officer of the Labour Court, Rajkot, in Reference LCR No.2048 of 1986, whereby

the said Reference was allowed.

2.0 The brief facts of the case are that the husband of the respondent herein along with other workmen had preferred References before the Labour Court, Rajkot, for reinstatement with continuity of service. The Labour Court, Rajkot, by order dated 20/02/1996 allowed the said References, thereby directing the petitioner Board to reinstate the workmen with continuity of service.

2.1 During the pendency of the aforesaid References, the husband of the respondent herein expired. Therefore, the wife of the deceased, i.e. The respondent herein, preferred an application before the petitioner Board for compassionate appointment.

2.2 Pursuant to the above application, the petitioner Board appointed the respondent in service on compassionate basis. Thereafter, the respondent preferred reference being Reference LCR No.2048 of 1986 for modification of the earlier award dated 20/02/1996. The Labour Court, Rajkot, by award dated 31/07/1996, passed the impugned order which is under challenge before this Court by way of this petition.

3.0 Mr.H S Munshaw learned advocate for the petitioner Board has contended that the Labour Court has travelled beyond the scope of the original award because while considering the application at Annexure-'C', the Labour Court has granted 60 per cent back wages from the date of dismissal, i.e. from 20/08/1985 to 30/11/1991. He has further contended that the Labour Court has without

assigning any reasons wrongly arrived at the conclusion that the action of the petitioner Board was illegal in terminating the services of the husband of the respondent herein and that the deceased was not gainfully employed. He has, therefore, submitted that the impugned order is bad and illegal and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and have perused the documents placed on record. Having gone through the impugned order of the Labour Court, I am of the opinion that the Labour Court ought not to have granted back wages, since in the earlier order dated 20/02/1996, no back wages was awarded. The Labour Court ought to have considered the said Reference for compensation in lieu of reinstatement. Hence, the direction granting back wages for the period from 20/08/1985 to 30/11/1991, is required to be quashed and set aside.

5.0 In above view of the matter, this petition is allowed. The impugned order of the Labour Court granting back wages for the period from 20/08/1985 to 30/11/1991 to the respondent wife is ordered to be quashed and set aside. The matter is ordered to be remanded back for considering the aspect of compensation in lieu of reinstatement. The Labour Court, Rajkot, shall dispose of the matter within a period of one year from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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